

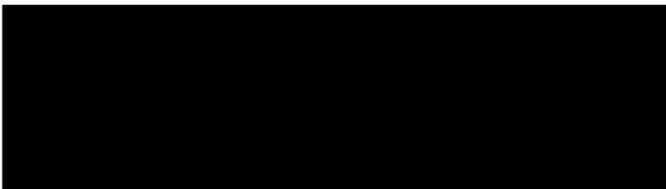
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



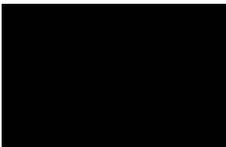
U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

H4



FILE:



Office: VERMONT SERVICE CENTER  
[consolidated therein]  
[consolidated therein]

Date OCT 03 2008

IN RE:

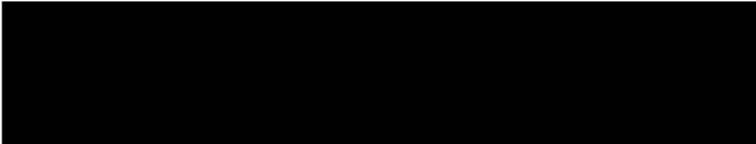
Applicant:



APPLICATION:

Application for Permission to Reapply for Admission into the United States after  
Deportation or Removal under Section 212(a)(9)(A) of the Immigration and  
Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permission to reapply for admission after removal was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guyana, who initially entered the United States in 1970. On February 26, 1977, the applicant was admitted to the United States as a NP-1 immigrant. On May 8, 1977, the applicant was convicted of aiding in impersonation in Canada, and was sentenced to one (1) day in jail and a fine. On April 19, 1978, an Order to Show Cause (OSC) was issued against the applicant. On January 19, 1979, an immigration judge ordered the applicant deported from the United States. The applicant filed an appeal with the Board of Immigration Appeals (Board), and on February 19, 1980, the Board remanded the applicant's case back to the immigration judge. On October 24, 1980, an immigration judge ordered the applicant deported from the United States. The applicant filed a motion to reopen, and on May 27, 1981, the Board returned the applicant's case to the immigration judge to adjudicate the motion to reopen. On August 31, 1981, an immigration judge reopened the applicant's case. On February 24, 1985, the applicant and his first wife divorced. On August 4, 1986, the applicant filed a Request for Asylum (Form I-589); however, he later withdrew his request. On August 26, 1986, the applicant filed an Application For Status as Permanent Resident (Form I-485). On May 12, 1987, the applicant was arrested for delivery of a controlled substance, cocaine. On June 19, 1987, the applicant filed an Application for Suspension of Deportation (Form I-256A). On July 9, 1987, an immigration judge ordered the applicant deported to Great Britain, or in the alternative, Guyana. On October 22, 1987, the applicant was convicted of delivery of a controlled substance, cocaine, and was sentenced to five (5) years probation. On May 23, 1991, the Board granted the applicant voluntary departure to depart the United States within 30 days. The applicant failed to depart the United States. On December 3, 1992, a Warrant of Deportation (Form I-205) was issued against the applicant. On June 10, 2002, the applicant's second wife filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed a Form I-485. On September 13, 2005, the applicant's United States citizen daughter filed a Form I-130 on behalf of the applicant. On November 28, 2005, the applicant filed an Application for Stay of Deportation or Removal (Form I-246). On November 29, 2005, the applicant filed a motion to reopen the Board's May 23, 1991 decision. On December 9, 2005, the Field Office Director, Baltimore, Maryland, denied the applicant's Form I-246. On the same day, another Form I-205 was issued against the applicant. On January 14, 2006, the applicant was removed from the United States. On July 3, 2006, the applicant filed an Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212). On March 1, 2006, the Board denied the applicant's motion to reopen. The applicant is inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II); and 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). He now seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside with his United States citizen wife and children.

The Director determined that the applicant is inadmissible pursuant to section 212(a)(9)(A), 8 U.S.C. § 1182(a)(9)(A), for being previously removed from the United States, that the unfavorable factors in the applicant's case outweighed the favorable factors, and he denied the applicant's Form I-212 accordingly. *Director's Decision*, dated March 30, 2007. The AAO finds that the applicant is also inadmissible under section 212(a)(2)(A)(i)(II), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for violating any law or regulation relating to a controlled substance.

Section 212(a)(2)(A) of the Act states in pertinent part:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude...or an attempt or conspiracy to commit such a crime, or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)),

is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D), and (E) or subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana...(emphasis added.)

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien previously removed.-

(i) Arriving Aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens.-Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the

case of a second or subsequent removal or at any time in the case of an aliens convicted of an aggravated felony) is inadmissible.

(iii) Exception.-Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

A review of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) amendments to the Act and prior statutes and case law regarding permission to reapply for admission reflects that Congress has, (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years in others, (2) has added a bar to admissibility for aliens who are unlawfully present in the United States, and (3) has imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. It is concluded that Congress has placed a high priority on deterring aliens from overstaying their authorized period of stay and from being present in the United States without lawful admission or parole.

On appeal, the applicant, through counsel, contends that the "Service Center erred in denying the applicant's [Form I-212]. The Service did not give enough weight [sic] to the period of time that has elapsed since his last arrest and conviction." *Form I-290B*, filed May 2, 2007. The AAO notes that over twenty (20) years has passed since the applicant's last conviction on May 12, 1987; however, that conviction was for violating a law relating to a controlled substance. Counsel states that the "Service maintained that the applicant worked illegally, however, it disregarded the fact that the applicant worked in a lawful employment and filed taxes." *Id.* The AAO notes that the applicant's history of paying taxes is a favorable factor; however, he worked for many years without authorization and that is an unfavorable factor. Additionally, the AAO notes that when the applicant was apprehended on May 3, 2005, he was working at JFK International Airport in New York with a fraudulently obtained SIDA badge; therefore, his employment at JFK International Airport was unlawful. Counsel contends that even though the applicant's conviction for aiding in impersonation on May 8, 1977 is a crime involving moral turpitude, the applicant "was eligible for a waiver under section 212(h) [of the Act]." *Id.* The AAO notes that counsel is correct that the applicant may have been eligible for a waiver under section 212(h) of the Act for his May 8, 1977 conviction; however, he was later convicted of delivery of a controlled substance, cocaine, for which there is no waiver available. Counsel claims that the "Service did not give enough weight to the applicant's favorable factors which include his wife and four United States citizen children." *Id.* The AAO notes that the applicant's marriage to his United States citizen wife occurred on October 4, 1999, which is after his order of deportation, and is an after-acquired equity. As an after-acquired equity this factor would be given less weight. Additionally, the AAO notes that unlike sections 212(g), (h), and (i) of the Act (which relate to waivers of inadmissibility for prospective immigrants), section 212(a)(9)(A)(iii) of the Act does not specify hardship threshold requirements which must be met. An applicant for permission to reapply for admission into the United States after deportation or removal need not establish that a particular level of hardship would result to a qualifying family member if the application were denied.

The record of proceeding reveals that on May 23, 1991, the Board granted the applicant voluntary departure. The applicant failed to depart the United States as ordered, and on December 3, 1992, and December 9, 2005, Warrants of Removal/Deportation were issued. On January 14, 2006, the applicant was removed from the United States. Based on the applicant's previous order of deportation, the applicant is clearly inadmissible under section 212(a)(9)(A)(ii)(I) of the Act.

Additionally, the AAO finds that the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), based on his October 22, 1987 conviction for delivery of a controlled substance, cocaine. In order for the applicant to qualify for a waiver pursuant to section 212(h) of the Act, he must have been convicted of only a single offense of simple possession of 30 grams or less of marijuana. Since the applicant was not convicted of a single offense of simple possession of 30 grams or less of marijuana, there is no waiver of the applicant's ground of inadmissibility. The applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act, and; therefore, he is statutorily ineligible for a waiver of inadmissibility.

*Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964), held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

The applicant is subject to the provisions of section 212(h) of the Act. No waiver is available to an alien who has been convicted of drug related crimes; therefore, no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. As the applicant is statutorily inadmissible to the United States, the Form I-212 was properly denied by the Director.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.